

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SCOTT ROGERS, on behalf of himself and
all other similarly situation,

Plaintiff,

v.

**CHW GROUP, INC. d/b/a CHOICE
HOME WARRANTY,**

Defendant.

Case No. 1:21-cv-00226-PLM-PJG

Judge: Hon. Paul L. Maloney

**DEFENDANT’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION TO DISMISS/STRIKE SECOND AMENDED COMPLAINT**

Defendant CHW Group, Inc. d/b/a Choice Home Warranty (“CHW”), by and through its undersigned counsel, respectfully requests leave to file a supplemental brief in support of its pending motion to dismiss and/or strike Plaintiff’s Second Amended Complaint (see ECF Nos. 18-20 & 23, “Motion”). In support thereof, CHW states as follows:

1. Plaintiff filed his putative class action Second Amended Complaint (ECF No. 14) on June 29, 2021. In response, and after an agreed extension, CHW filed its Motion on July 27, 2021. Plaintiff filed his Opposition to the Motion on August 24, 2021 (ECF No. 21). CHW filed its Reply in support of its Motion on September 7, 2021 (ECF No. 22).

2. On September 13, 2021, Plaintiff filed a “Notice of Supplemental Authority” (ECF No. 23, “Notice”) regarding certain non-binding authority, specifically an order in a case against CHW pending in another jurisdiction, *Adam v. CHW Group, Inc.*, Case No. 1:21-cv-226, N.D. Iowa, ECF No. 39 (September 9, 2021), attached to the Notice (*see* ECF No. 23).

3. In the Notice, Plaintiff argues, inaccurately, that CHW had “ma[de] nearly identical arguments in a Motion to Dismiss a TCPA case” in that jurisdiction. Plaintiff also argues that the *Adam* court “rejected several of the arguments Defendant makes here” in its Motion, *see* Notice at 2, but CHW disputes this.

4. To briefly address (i) Plaintiff’s inaccurate statements regarding the non-binding *Adam* authority, (ii) the ways in which the *Adam* case is distinguishable from this one, and (iii) why CHW contends *Adam* was wrongly decided in part, CHW respectfully requests leave to file a supplemental brief in support of its Motion.

5. CHW does not seek extensive supplemental briefing but rather believes that a supplemental brief of up to 1,100 words (or roughly 3 pages), not including the case caption, title, signature page or certificates, should be sufficient to adequately address the foregoing issues. CHW further believes that a supplemental brief will assist the Court in reaching a just and accurate ruling on the Motion in the present case.

6. Counsel for CHW conferred with counsel for Plaintiff regarding this request on September 13, 2021, who indicated that he opposed this request.

WHEREFORE, for all of the reasons above, Defendant respectfully requests that it be granted leave to file a supplemental brief in support of its Motion, to be submitted on a date to be determined by the Court, along with granting all other relief deemed just and proper.

Dated: September 13, 2021

Respectfully submitted,

By: /s/ A. Paul Heeringa

John W. McGuinness (*pro hac vice* to be requested)

A. Paul Heeringa

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*Attorneys for Defendant CHW Group, Inc.,
d.b.a. Choice Home Warranty*

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.3

I hereby certify that the foregoing supporting motion contains **409** words, including headings, footnotes, citations and quotations, but not including the case caption, title, cover sheets, table of contents, table of authorities, the signature block, attachments (including this certificate), exhibits, and/or affidavits. The brief was generated using Microsoft Word, Office 365 Edition.

/s/ A. Paul Heeringa
A. Paul Heeringa

CERTIFICATE OF SERVICE

I hereby certify that, on September 13, 2021, the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic docket.

/s/ A. Paul Heeringa
A. Paul Heeringa